
(1937) 12 PAT CK 0009
In the Patna High Court

Pratap Narain Jha and Others

APPELLANT

Vs

Ramasray Pershad Chaudhury and Others

RESPONDENT

Date of Decision : 15-12-1937

Acts Referred:

Citation : AIR 1938 Patna 81

Judgement

1. The suit out of which this appeal arises was instituted for recovery of arrears of produce rent for the years 1337 to 1340 Faslis. The Munaif finding the evidence regarding the appraisalment which was adduced on behalf, of the plaintiffs to be untrustworthy and insufficient, decreed the suit in part on the admissions of the defendants. His decision was reversed on appeal by the Additional Districts Judge of Darbhanga who held on the authority of the decision in Hafiz Zeyauddin v. Jagdeo Singh A.I.R.1929. Pat. 384 that in a suit for arrears of produce rent, the entire onus was upon the tenant. defendants to satisfy the Court as to what was the produce during the years in suit. He found that the tenants had failed to prove that appraisalment had not been made as claimed by the plaintiffs; and that their own account of the produce could not be accepted, partly because certain receipts which had been granted on behalf of a co-sharer of the plaintiffs for his share of the produce rent for the years 1337 and 1339 had not been formally proved. He decreed the plaintiffs' suit in full, and the defendants preferred a second appeal against his decision. The second appeal originally came up for hearing before a Judge sitting singly, at whose instance it was referred to a larger Bench, in order that the question of the correctness of the expression of opinion of the Division Bench in Hafiz Zeyauddin v. Jagdeo Singh A.I.R.1929. Pat. 38 might be considered.

2. In the first place it is to be observed that the remarks in the decision in Hafiz Zeyauddin's case A.I.R.1929. Pat. 384 on which the head note in the report in the Patna Law Times is based, are at the most obiter dicta, because the decree in that appeal was made by consent, based on the figures given in the landlord's recodes return, and the question of onus did not arise. Mahomed Ibrahim v. Abad A.I.R.1930. Pat. 388 where in the argument the decision in Hafiz Zeyauddin's

case A.I.R.1929. Pat. 384 had been Cited, it was observed that in a suit for arrears of produce rent as in any other rent Suit the plaintiff's case must be proved admitted before he can obtain a decree; that is to say in a suit for arrears" of produce rent as in any other suit, the burden of proof initially lies upon the plaintiff.

3. In our judgment the account of the matter given in Mahomed Ibrahim v. Abad A.I.R.1930. Pat. 388 is the more correct pf the two and since we have to decide whether this obiter dictum in Hafiz Zeyauddin v. Jagdeo Singh A.I.R.1929. Pat. 384 should be accepted or not, we are of opinion that it should be regarded as in correct, so far as it lays down that in a suit for arrears of produce rent the onus is on the defendant to satisfy the Court what was the produce during the years in suit. As we have observed, the report cannot properly be considered as authority for that proposition, but since it has been so considered, and so far as obiter dicta of this kind can be regarded as authority, it must fox the future be treated as overruled. The learned Additional District Judge erred in law in treating the receipts of the plaintiffs" cosharer which were produced on behalf of the defendants as in-admissible in evidence, because they had not been formally proved. They were admitted into evidence without objection, and they were proved by the evidence of the defendants" witness Chatra Singh. He described himself as karpardaz of the co-sharer landlord on whose behalf the receipts had been granted; and lie stated that the receipts had been granted by the patwari after payment of the produce rent. He was not cross-examined oh either of these points. The learned Munsif discussing the papers which purported to be records of an appraisement made on behalf of the plaintiffs, came to the conclusion that these were not papers prepared in the field, partly because he noticed that the ink was far too fresh for records which purported to be three or four years old. The learned Additional District Judge, when he came to hear the appeal seven, then months later, was not satisfied that the ink looked fresh; but the learned advocate for the appellants remarks with reason that ink which look fresh in July 1931 would necessarily not t look fresh in December of the following her This would be a question of fact and not in itself a ground for interference in second appeal.

5. The learned Munsif did not allow the plaintiffs" claim because he was not satisfied that the papers produced be for him "were records of actual appraisements, Which was without question a sufficient ground for declining to grant a decree in accordance with the claim. The learned Additional District Judge, in dealing with the matter in appeal, misled by his view regarding the party on whom the burden of proof lay, discussed the question of whether it had been proved that these papers had not been prepared in the field at the time of the so called appraisement, criticizing the learned Munsif?s grounds for holding that the defendants had demonstrated that the papers were not genuine. But the learned Advocate for the appellants points out that the learned additional District Judge did not at any time apply his mind to the question of whether it had been proved that the actual outturn had been that claimed by the plaintiffs. He argues

that in the absence of such proof, the plaintiffs' claim could not be decreed; and he points out that though there is evidence regarding the writing of the appraisement papers. There is no evidence on the record to prove that the outturn was as described in those papers.

6. It therefore becomes necessary to consider in what circumstances records of appraisement may properly be treated as evidence in themselves of the correctness of the appraisement. The meaning of the term 'appraisement' as it is used in the tenancy legislation of this Province, may be understood from the often quoted description given in 1858 by the Commissioner of the Division in which Darbhanga District lay when Act 10 of 1859 was under consideration. (Papers relating to the passing of Act 10 of 1859 was under consideration. (Papers relating to the passing of Act 10 of 1859, pp. 104 and 105; Proceedings of the Lieutenant Governor of Bengal during May 1859, page 86):

When the crop is ripe, the patwari, the gumashta, the amin, a jaribkas or measurer, a salis or arbitrator, a navisinda or writer, and the jeth raiyat of the village, with the raiyat himself, proceed to the field in which the crop is growing. The salis first makes an estimate of the produce. The amin then makes another. If the two estimates agree the matter is considered settled. If they differ, the raiyat cuts a cottah where the crop is thinnest, the Zamindar's people cut another where it is devalues. The produce is threshed out, mixed together and weighed, and the produce of the whole field is threshed out, mixed together and weighed, and the produce of the whole field is estimated from this sample, A memorandum of the result, called a anabantid, is made out by the patwari and his writer and signed by those present. The raiyat is then at liberty to cut and store his grain. The patwari next prepares a paper called a three, showing the amount of grain in the possession of the raiyat and the respective shares of the malik and the raiyat, and sends for the malik's share which the raiyat either pays in grain or in money.

7. It may be said to be not necessary, in order that a record of appraisement should on proof of the procedure followed, be treated as evidence in itself of the correctness of the plaintiffs' claim, that the procedure should be exactly in accordance with that described by Mr. Samuells. But before a record of appraisement can be treated as in itself evidence on which liability may be imputed, it should be proved that the appraisement was made with proper formality, that the raiyat was not merely present but setually was a party to the proceedings and that he signified his assent to the appraisement by signing the record; or that appraisement was made by a salis to whose appointment in that capacity the raiyat consented, or that points of difference were determined by some customary mode of arbitration.

8. Otherwise to entitle the landlord to a decree for the amount described in the papers, it must be proved not merely that the appraisement was made but that the appraisement was correct; that is to say, the person who made the appraisement must prove not merely that he wrote down on a piece of paper a

certain number of maunds and seers, but that this was the correct estimate of the cutturn. We cannot exactly lay down what amount of proof should be required of the good faith of the person making the appraisement or of his qualifications as an expert; but where the land-lord has failed to prove that the outturn was as claimed by him, he has not discharged the initial burden cast upon him of proving that this is the amount of crop of which he is entitled to a share. In other words, unless the raiyat has definitely and formally accepted the danabandi by signing the record of appraisement, or unless it is demonstrated that the danabandi was carried out in something of the manner of a proceeding in arbitration, the landlord is required to prove not only that the dana bandi was made but that the estimate of outturn was correct.

9. The learned advocate for the appellants points out that in the present case, as evidence to support the decree, there is nothing except the statement of the plaintiff's karpardaz that the tenant accepted the appraisement. The tenant referred to is *lite (sic) te*; but there is no token of acceptance on the papers produced; and evidence of acceptance of this kind should not be used to impute liability. Apart from this statement of the karpardaz there is not actual evidence that the crop was of the amount claimed by the landlord. The learned Additional District Judge was misled in supposing that the amounts written in the papers produced did not represent the proper amount of crop. He was also misled in supposing that there was lack of proof in the technical sense, to prevent him from accepting the apparently trustworthy evidence put forward by the defendants in support of their case that the outturn was very much less than that claimed. But in the state of the record which we have noted, it would be useless to remand this case for rehearing in appeal, since no decree can be claimed except so far as liability has been admitted by the defendants. The decree of the lower Appellate Court must accordingly be set aside and the decree of the Munsif will be restored.

10. The appellants are entitled to their costs in this Court and in the Court of the Additional District Judge.